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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of Secretary

In the matter of
Petition of Ameritech for Modification of
Certain LATA Boundaries in Ohio

96-159

**PETITION OF AMERITECH FOR MODIFICATION OF CERTAIN LATA
BOUNDARIES IN OHIO**

Pursuant to Section 3(25) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 153(25), Ameritech hereby petitions the Commission for approval of certain LATA boundary adjustments in Ohio. One adjustment would permit one-way Extended Area Service ("EAS") from Ameritech's Duffy (Ohio) Exchange to the New Martinsville (West Virginia) Exchange of Bell Atlantic. Three other adjustments would provide for one-way EAS from the Aurora, Northfield, and Twinsburg (Ohio) Exchanges of Western Reserve Telephone Company to Ameritech Ohio's Akron Exchange. These changes have already been approved by the Public Utilities Commission of Ohio, and that Commission has directed Ameritech to seek the concurrence of this Commission therefor.

I. Authority of the Commission To Grant the Requested Relief

Local Access and Transport Areas ("LATAs") were first established under the AT&T divestiture decree.¹ Their purpose was to define the respective realms of intraLATA assets and functions, which were to be assigned to the Bell Operating Companies (BOCs) in the divestiture, and interLATA services, from which the BOCs would thereafter be barred. The District Court specifically approved² the configuration of the LATAs (originally known as "exchange areas"³) after they had been proposed by AT&T and the BOCs following criteria set forth in the decree.⁴ In its order,

¹ See *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd mem. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

² *United States v. Western Elec. Co.*, 569 F. Supp. 990 (D.D.C. 1983) [hereinafter cited as "1983 LATA Opinion"].

³ The term "exchange" as used in the decree was deemed confusing, since regulatory "exchanges" already existed that were much smaller, so the term LATA was adopted to give a distinctive name to the "exchanges" under the decree. See 1983 LATA Opinion, *supra* note 2, 569 F. Supp. at 993-94 n.9.

⁴ Section IV(G) of that decree provided as follows:

"Exchange area," or "exchange" means a geographic area established by a BOC in accordance with the following criteria:

1. any such area shall encompass one or more contiguous local exchange areas serving common social, economic, and other purposes, even where such configuration transcends municipal or other local governmental boundaries;
2. every point served by a BOC within a State shall be included within an exchange area;
3. no such area which includes part or all of one standard metropolitan statistical area (or a consolidated statistical area, in the case of densely populated States) shall include a substantial part of any other standard metropolitan statistical area (or a consolidated statistical area, in the case of densely populated States), unless the Court shall otherwise allow; and
4. except with approval of the Court, no exchange area located in one State shall include any point located within another State.

the Court not only approved the LATA boundaries, but also preserved *en masse* a large number of pre-existing EAS arrangements crossing the LATA boundaries that had just been established.⁵

After the LATAs been approved, it was almost immediately necessary to begin adjusting them to accommodate demographic and regulatory changes; soon the Court observed, "It . . . appears that most of these requests are noncontroversial, and that they therefore unnecessarily take up the time of the Court and burden its docket."⁶ Accordingly, on March 15, 1984, the Court established a streamlined procedure for adjustments in LATA configurations.⁷ Under this process, the BOCs submitted proposed changes to the Department of Justice, which recommended them to the Court for the entry of an order. Interested parties were notified and

⁵ The Court observed, 1983 LATA Opinion, *supra* note 2, 569 F. Supp. at 1002 n.54:

The Operating Companies have also proposed, and the Department of Justice has also approved, two additional exceptions to the general criteria of the decree. Both exceptions would permit the Operating Companies to carry traffic that crosses LATA boundaries in limited situations, despite the general prohibition on such crossings contained in section II(D)(1) of the decree. The first of these exceptions would preserve what are referred to as "Local Calling and Non-optional Extended Area Service (EAS) arrangements." These arrangements, which arose over time under state regulatory auspices, are intended to provide local calling routes and rates within nearby local exchanges. . . . The Operating Companies propose to continue these serving arrangements in order to avoid disruption of local routing and rate arrangements, even when the routes are intersected by LATA boundaries. . . .

⁶ United States v. Western Elec. Co., No. 82-0192, slip op. at 27 (D.D.C. Feb. 6, 1984).

⁷ United States v. Western Elec. Co., No. 82-0192, slip op. (D.D.C. Mar. 15, 1984).

allowed to object to any changes they found not to be "noncontroversial." Thereafter the RBOCs sought approximately twenty-five such changes a year. Although some of these involved actual movement of LATA boundaries, the majority reflected state commission orders for new EAS routes that happened to cross a LATA boundary.

The Telecommunications Act of 1996 supersedes the decree on a prospective basis and lodges jurisdiction in the Commission over matters that were formerly within the purview of the decree court. For that reason, it is necessary for the new Act to provide this definition of a LATA.⁸

The term "local access and transport area" or "LATA" means a contiguous geographic area—

(A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after such date of enactment and approved by the Commission.

It is obvious that this definition is intended to carry over the Consent Decree definition in its entirety, with a significant change: new LATA adjustments are now to be "approved by the Commission" instead of by the Court. The statute thus clearly requires the BOCs to seek the Commission's approval for LATA boundary adjustments and just as clearly authorizes the Commission to grant it.

⁸ Communications Act of 1934, § 3(25) as amended by the Telecommunications Act of 1996, § 3(a)(43), 47 U.S.C. § 153(25).

In responding to similar recent requests by BellSouth and Southwestern Bell,⁹ AT&T Corp. has tried to raise the quibble that a new EAS route does not really change or "modify" the LATA boundary as provided in Section 3(25), but only creates an exception for the particular customers in the affected areas. There is no provision in the Act, AT&T contends, for any in-region "waiver" of the BOC interLATA restriction, other than the ability of the BOC to obtain outright in-region interLATA relief under Section 271. Therefore, AT&T seems to suggest, EAS issues should be considered under Section 271 rather than Section 3(25).

AT&T's contention is unsound as a matter of law and impractical. Section 271 relief applies on a total, statewide basis. Conversely, EAS is an issue for only a few hundred subscribers at a time, involves a limited geographic area, and involves a state's decision that a community of interest justifies expanding a local calling area.

Furthermore, if AT&T's argument is correct that the BOCs are required to seek relief for EAS under Section 271, they would be required by Section 272(a)(2)(B) to create, fund, and manage a separate EAS subsidiary. Such a structure would serve no useful purpose, since EAS is by definition a local service provided by the LEC. Thus if the Commission is not authorized to approve EAS adjustments under 47 U.S.C. § 153(25), there

⁹ See Public Notice, DA 96-1190, CC Docket No. 96-159, released July 26, 1996, Comments of AT&T Corp., filed Aug. 26, 1996.

would be no practical way for them to be approved at all. This absurd result was not intended by the statute.

Additionally, AT&T's novel theory ignores the fact that Congress was aware that EAS had been treated as a boundary issue from the decree Court's very first approval of the LATAs in 1983 through approval of many dozens of interLATA EAS routes. The Court treated and approved these requests under the Consent Decree as LATA boundary cases and *not* as interLATA line-of-business waivers. Plainly the statute is meant to continue, rather than to disturb, the existing practice. Accordingly, the Commission has full authority to approve the new EAS routes involved herein.

II. One-Way EAS from Ameritech's Duffy (Ohio) Exchange to the New Martinsville (West Virginia) Exchange of Bell Atlantic.

The Duffy Exchange, served by Ameritech Ohio, is located in Monroe County, Ohio. In December 1995 it had approximately 1,196 access lines, which placed an average of 9.94 calls per access line to the Bell Atlantic exchange of New Martinsville, West Virginia. The Ohio Commission has ordered one-way EAS to be instituted from Duffy to New Martinsville. The reasoning behind that EAS route is stated in the Ohio Commission's Order of August 22, 1996, a copy of which is attached hereto as Exhibit 1. In its order on rehearing of October 10, 1996, attached hereto as Exhibit 2, the Ohio Commission ordered Ameritech to seek the approval of this Commission for the Duffy-to-New Martinsville EAS route within 30 days (*i.e.*, by

November 12, 1996, after allowing for weekends and holidays occurring at the end of that period).

III. One-Way EAS from the Aurora, Northfield, and Twinsburg (Ohio) Exchanges of Western Reserve Telephone Company to Ameritech Ohio's Akron Exchange

The Twinsburg and Northfield Exchanges are located in Summit County, Ohio, and the Aurora Exchange is situated primarily in Portage County with some portions in Summit County and Geauga County. All three of these Ohio exchanges are served by Western Reserve Telephone Company. The Ohio Commission has ordered one-way, nonoptional Extended Local Calling Service (ELCS) to be instituted from Aurora, Northfield, and Twinsburg to Ameritech Ohio's Akron (Ohio) Exchange. The reasoning behind that EAS route is stated in the Ohio Commission's Order of March 23, 1995, a copy of which is attached hereto as Exhibit 3. In a subsequent order of October 24, 1996, attached hereto as Exhibit 4, the Ohio Commission ordered Ameritech to seek the approval of this Commission for these ELCS routes within 20 days (*i.e.*, by November 13, 1996).

It should be noted that the three situations presented here are all one-way routes *into* the territory of Ameritech Ohio. Accordingly, all of the EAS calls crossing from one LATA to another will be initiated by customers of Western Reserve Telephone Company and that Company will receive any revenue for such calls. Western Reserve, of course, is not a BOC and has never been subject to a prohibition against providing interLATA service under either the Consent Decree or the Telecommunications Act. Thus

there would not immediately appear to be any need for Commission action in this case.

However, it was the view of the Department of Justice during the Consent Decree era that a LATA boundary change order had to be obtained for a BOC even to participate at the receiving end of an EAS call crossing LATA boundaries. Yet, in contrast, Section 271 of the new Act, which imposes the in-region interLATA prohibition, contains the proviso in Section 271(b)(4) that "[n]othing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to subsection (j)."¹⁰ Thus the Commission here may wish to consider the three ELCS routes on their merits and approve them, or in the alternative it may announce a general rule that no adjustment of LATA boundary configurations is necessary to accommodate BOC incoming-only communications from non-BOC territory across LATA boundaries.

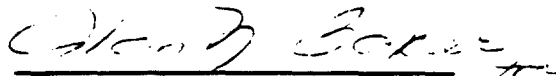
IV. Conclusion

The Commission has ample statutory to grant the relief sought herein, and the Ohio Commission decisions contain the supporting rationale for the relief sought. Accordingly, this Commission should approve the institution of one-way Extended Area Service ("EAS") from Ameritech's Duffy (Ohio)

¹⁰ Subsection (j) pertains to the termination of services such as "800" which enable the called party to determine the carrier, and accordingly subsection (j) could not apply to incoming EAS.

Exchange to the New Martinsville (West Virginia) Exchange of Bell Atlantic. This Commission should also approve one-way EAS from the Aurora, Northfield, and Twinsburg (Ohio) Exchanges of Western Reserve Telephone Company to Ameritech Ohio's Akron Exchange, or in the alternative this Commission should rule that no further approval is needed for one-way incoming EAS already authorized by s state commission.

Respectfully submitted,



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November 12, 1996

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Carol Jennings and Numerous Other Subscribers of the Duffy Exchange of Ameritech Ohio,

Complainants,

v.

Ameritech Ohio,

Respondent,

Relative to a Request for Extended Area Service From the Duffy Exchange of Ameritech Ohio to the New Martinsville Exchange of Bell Atlantic West Virginia, Inc.

Case No. 95-983-TP-PEX

OPINION AND ORDER

The Commission, considering the petition filed on October 25, 1995, as amended January 16, 1996, the public hearing held on June 26, 1996, and having determined that this matter should proceed directly to opinion and order, issues its Opinion and Order.

APPEARANCES:

Carol Jennings, P. O. Box 278, Hannibal, Ohio 43931, on behalf of the complainants.

Charles S. Rawlings, O'Malley, Lenahan & Gill, 13th Floor, 75 Public Square, Cleveland, Ohio 44114, on behalf of Ameritech Ohio.

OPINION:

On October 25, 1995, as amended on January 16, 1996, Carol Jennings, spokesperson for the complainants, and numerous other subscribers of the Duffy Exchange of Ameritech Ohio (Ameritech, respondent) filed a petition with the Commission seeking the institution of extended area service (EAS) from the Duffy Exchange of Ameritech to the New Martinsville Exchange of Bell Atlantic West Virginia, Inc. (Bell Atlantic) which is located in West Virginia. By entry issued January 24, 1996, as amended February 22, 1996, MCI Telecommunications Corp., Allnet Communication Services, AT&T Communications, LCI International Telecom Corp., U.S. Sprint Communications Services, Inc. and United Telephone Long Distance Inc. (collectively referred to as "IXCs") were directed to provide Ameritech with certain

calling information by April 8, 1996, and file an affidavit with the Commission that information had been provided to Ameritech. Ameritech filed its answer on March 1, 1996. A prehearing conference was held in this matter on May 24, 1996, however, the parties were unable to resolve this case informally. The entry issued January 24, 1996, also ordered that any party seeking intervention must file a motion to intervene by June 11, 1996. No entity requested intervention in this case. Publication of legal notice of the hearing was made in The Monroe County Beacon, a newspaper of general circulation in Monroe County, Ohio. On May 10, 1996, Ameritech filed its supplemental informational response. The public hearing was held on June 26, 1996 in Hannan, Ohio.

I. Statutes and Regulations Pertaining to EAS

Section 4905.26, Revised Code, provides that, upon the filing of a complaint by 100 subscribers or five percent of the subscribers in any telephone exchange, which number is smaller, seeking the institution of EAS, the Commission shall schedule a hearing on the complaint. Ameritech Ohio is a telephone company as defined in Section 4905.03(A)(2), Revised Code, and a public utility by reason of Section 4903.01, Revised Code. Thus, Ameritech is subject to the jurisdiction of this Commission under the authority of Sections 4905.04 and 4905.05, Revised Code. Sections 4905.26, 4905.22, 4905.381, Revised Code, authorize this Commission to order telephone companies under its jurisdiction to establish EAS. This authority has been recognized by the Supreme Court of Ohio in *General Telephone Co. v. Public Utilities Commission*, 154 Ohio St. 2d 154, 341 N.E.2d 832 (1976), and *Ohio Central Telephone Corp. v. Public Utilities Commission*, 166 Ohio St. 180, 140 N.E.2d 782 (1957).

Chapter 4901:1-7, Ohio Administrative Code (O.A.C.), governs the establishment of EAS. Rule 4901:1-7-01(G), O.A.C., defines EAS as "flat-rate or usage sensitive telecommunications service, permitting subscribers of a given exchange to place calls and receive calls from one or more other exchanges without being assessed message or telephone charges for each call."

Rule 4901:1-7-03, O.A.C., sets forth a number of general factors to be considered without limiting the consideration of other factors, in determining whether the establishment of EAS is justified. The listed factors are:

- (1) Community of interest factors for at least one representative month, including:
 - (a) The calling rate between the involved exchanges; and
 - (b) The distribution of calling.
- (2) Location of various services, products, and activities, including, but not limited to, the following:

- (a) Population movement and other demographic considerations;
 - (b) Commercial development;
 - (c) School activities;
 - (d) Police and fire services;
 - (e) Other governmental services including the county seat;
 - (f) Medical, dental, and veterinarian services;
 - (g) Religious institutions;
 - (h) Agricultural organizations, and services;
 - (i) Shopping and service centers;
 - (j) Employment centers; and
 - (k) Social interest, cultural, and recreational activities.
- (3) Investment, cost, and revenue considerations, including, but not be limited to, the following:
- (a) Marginal investment costs;
 - (b) Annual gross marginal costs;
 - (c) Savings and other revenue enhancements;
 - (d) Annual revenues;
 - (e) Lost toll revenues; and
 - (f) Lost access charge revenues.

This rule also sets forth calling guidelines which, in the absence of other compelling circumstances to be determined on a case-by-case basis, will trigger the right of calling relief the complainants may obtain. Rule 4901:1-7-03, O.A.C., also indicates that EAS is not a substitute for message toll telephone service, but instead is a service designed to meet the day-to-day calling requirements of subscribers which can properly be met with local calling confined to the local calling area of a particular exchange.

II. Calling Statistics

Two factors that the Commission considers in determining whether requested EAS is in the public interest are referred to as the "calling rate" and "distribution of calling."¹ The calling rate (or the mean) represents the average number of calls between the involved exchanges during the study month. The distribution of calling reflects the percentage of subscribers making one or more calls between the involved exchanges during the study month. The purpose of considering this data is to determine whether the traffic between the exchanges is originated by subscribers generally or by only a relatively few subscribers.

¹ Ameritech was unable to determine the distribution of calling from the information provided by the IXCs.

Rule 4901:1-7-03(B)(1)(c), O.A.C., provides, in part, that the Commission shall consider the calling rate and distribution of calling in both the exchange requesting EAS and the exchange being requested, unless the access lines of the requesting exchange number less than 40 percent of the total of the access lines in both exchanges. In that instance, the Commission shall consider the calling data from the requesting exchange and the requested exchange(s) only. As of December, 1995 the Duffy Exchange had 1.1 access lines.² The calling rate from the Duffy Exchange to the New Martinsville Exchange was 9.94 calls per access line for the month of December 1995 (Ameritech Exhibit 1).

III. Location of Various Services, Products, and Activities

The third factor used by the Commission in determining the propriety of instituting EAS is the location of services, products, and activities within the requesting and requested exchanges. The Duffy Exchange is located in Monroe County, Ohio and the New Martinsville Exchange is located in West Virginia. Geographically, the Duffy and New Martinsville exchanges are separated by the Ohio River connected by a bridge. The county seat of Monroe County is Woodsfield. The Duffy Exchange local calling area currently includes the Clarrington, Graysville, New Malamoras, and Woodsfield exchanges.

At the public hearing, 14 public witnesses testified in favor of the proposed EAS. No one testified in opposition to the requested service.

The record demonstrates that emergency medical, volunteer fire, and police services are available within the local calling area, although 9-1-1 emergency services are not available (Tr. 7, 41-42). Testimony offered at the hearing indicates that calls to the school system for grade school through high school are a local call and that instruction for the learning disabled and vocational training is available at public schools within the local calling area (Tr. 22-23, 27). The Ameritech White/Yellow Pages for Eastern Ohio River Area 1995-1996 (Ameritech Exhibit 2) and public testimony offered at the hearing demonstrate that within the Duffy Exchange local calling area there are county governmental services (Tr. 45), a few doctors – a family doctor, pediatrician, and an internist but no optometrist (Tr. 33), no hospital, one clinic, three pharmacies/drug stores (Tr. 26), two veterinarians, one of which only serves the area four hours per week (Tr. 49), a dentist (Tr. 45), and two nursing homes (Tr. 14). Within the Duffy Exchange local calling area there are a few small restaurants (Tr. 70), various religious institutions (Tr. 13, 51), three grocery stores, one clothing store, one shoe store (Tr. 33), three hardware stores (Tr. 16, 33), an automobile dealership (Tr. 36), the services of an accountant, a few attorneys and an engineer (Tr. 70), and one major employer, Orm and The North American Coal Corporation, which has steadily reduced its workforce over the years (Tr. 27). For entertainment the Duffy Exchange subscribers have within their local calling area a swimming pool, sports activities for children (Tr. 48), and t

² The number of access lines for the New Martinsville Exchange was not available.

places to rent videos. Most of the services, products, and activities available within the local calling area of the Duffy Exchange are located in the Woodsfield Exchange.

Duffy Exchange subscribers expressed a need to call the New Martinsville Exchange to contact family, friends, and church members, including the ill and aged (Tr. 6, 11, 14, 15, 18, 49, 54, 65, 80, 82, 85), the large selection of medium to large employers (Tr. 19-20) and customers, clients and suppliers/vendors (Tr. 29).

The majority of the testimony offered at the public hearing focused on the need to call the New Martinsville Exchange for various activities, products, and services which are not available within the current local calling area such as medical specialties including, hematologists, optometrists, orthodontists (Tr. 55), and oncologists (Tr. 56), a hospital, namely Wetzel County Hospital (Tr. 8), emergency medical services such as LifeFlight (Tr. 64, 89), specialty medical equipment and medical supplies (Tr. 26), dental equipment and supplies (Tr. 66), a fitness center (Tr. 78), retail stores for clothing, shoes, small appliances and electronics (Tr. 7, 19, 20, 30), various large and discount department stores (Tr. 27), large grocery stores (Tr. 5, 20), two colleges (Tr. 19), a community center with facilities for banquets and receptions (Tr. 72), a bowling alley (Tr. 47), theater (Tr. 78), movies (Tr. 24), and music stores (Tr. 52). Duffy Exchange subscribers also call the New Martinsville Exchange for counseling services (Tr. 68), rehabilitative services (Tr. 61), facilities (Tr. 61), veterinarians (Tr. 47, 55), religious institutions (Tr. 54), engineering firms, attorneys and accountants (Tr. 70-71), restaurants (Tr. 7, 70), Wetzel County Care Center (Tr. 14, 15), hardware stores (Tr. 16) repair services, including plumbers (Tr. 16, 61, 86), charitable organizations (Tr. 19), and for various activities including softball, baseball, swimming, (Tr. 24), music lessons (Tr. 30), and soccer, gymnastics and dance lessons for children (Tr. 63). Also, most of the parents of school-age children who live in New Martinsville, therefore, the local school must call the New Martinsville Exchange on a daily basis to contact the (employer of) parents of ill children and in regard to school-related activities (Tr. 21).

Duffy Exchange subscribers acknowledged that, although some of these goods, products, and services are available in their local calling area, the selection, quality, and cost of the products, services, and activities in the New Martinsville Exchange are better (Tr. 83). Perhaps most importantly is the location of the city of New Martinsville, which is part of the New Martinsville Exchange. New Martinsville is only 2-3 miles from the homes of most of the witnesses (Tr. 7) and only a short drive away for any of the subscribers daily needs or employment. On the other hand, although the New Martinsville Exchange and the Woodsfield Exchange are contiguous, the distance from the homes where most of the witnesses live to the city of Woodsfield where most of the goods, products and services at issue are located is approximately 25-30 miles.

IV. Investment and Cost Considerations

Rule 4901:1-7-03(C), O.A.C., requires that consideration also be given to investment, cost, and revenue factors involved in any EAS proceeding. This provides, in part, that:

[i]t would not be in the public interest for a local exchange company to enter into exceptionally heavy investments in facilities and incur exceptionally high costs in situations where the EAS requirement is not substantial.

Ameritech provided a witness at the hearing to testify relative to both cost and non-cost issues. Jacqueline Young, State Tariff Manager for the State of Ohio, Ameritech Ohio, appeared at the hearing and sponsored Ameritech Ohio's Exhibit consisting of her prefiled testimony and Young Exhibits 1-3. Ms. Young reviewed calling rates and explained why the distribution of calling between the requested and requesting exchanges was not available. Ms. Young explained that not all of the exchanges who provide calling statistics to Ameritech can provide the detail of the calls and therefore, Ameritech was unable to calculate the aggregated distribution of calling. Ms. Young also noted that since the Duffy Exchange is located in the Columbus, Ohio local access and transport area (LATA) and the New Martinsville Exchange is located in the West Virginia LATA served by Bell Atlantic, Ameritech does not offer any alternative services to EAS.

In its information response filed June 14, 1996, Ameritech set forth its estimates of investment costs and associated annual costs should one-way flat-rate EAS be instituted from the Duffy Exchange to the New Martinsville Exchange. Ameritech's investment and associated annual costs of implementing flat-rate EAS is zero. The only impact on Ameritech Ohio from the institution of EAS from the Duffy Exchange to the New Martinsville Exchange would be the loss of access fees and billing and collection service for interexchange carriers and a one time charge of \$4,100 for directory charges. Ameritech Ohio indicates that it would not gain any revenue with the implementation of flat-rate EAS because there are no additional revenues received from flat-rate EAS service. Ameritech Ohio's estimated lost toll revenue, revenue associated with EAS and annual net revenue losses from the institution of EAS are provided below:

EAS from Duffy to New Martinsville

	<u>Investment</u>	<u>Annual Cost and Lost Revenues*</u>	<u>Additional Revenues</u>	<u>Annual Revenue Impact</u>
Flat-rate	\$ 0	8,503	0	(8,503)

* Includes transmission and trunk termination equipment, and revenue lost from originating and terminating access fees from interexchange carriers and billing and collections services for interexchange carriers but does not include the one time directory charge of \$4,100.

However, Ameritech recommends that measured-rate EAS rather than flat-rate EAS, be ordered if the Commission determines that extended area service is appropriate. The rate for Ameritech's measured-rate service, local calling plus (LCP), is based on time of day, the number of calls, the distance and the duration of the call and represents a discount to subscribers of approximately 90 percent from toll charges. Ameritech believes this is the fairest form of EAS as only those people who make a call are required to pay for the services and there are no set-up fees or installation charges for LCP.

IV. Willingness of Subscribers to Pay Appropriate Rates

Rule 4901:1-7-03(D), O.A.C., prescribes that a further factor for consideration in EAS cases is the willingness of a substantial majority of affected subscribers to pay appropriate rates in exchange for the requested EAS. If flat-rate EAS were implemented, Duffy subscribers would not experience an increase in local monthly service rates. Therefore, it would not be necessary to conduct a canvass of the Duffy Exchange subscribers if the Commission were to find that flat-rate EAS is warranted.

CONCLUSION:

Upon thorough review of the record in this case, in conjunction with the various factors enumerated in Chapter 4901:1-7, O.A.C., the Commission concludes that a sufficient community of interest exists to support a finding that the institution of some form of EAS is warranted and should be granted from the Duffy Exchange to the Martinsville Exchange. Several factors have entered into the Commission's decision, the first of which is the relevant calling data. The purpose of considering such data is to determine whether the calling traffic between the exchanges is sufficiently frequent and widespread to justify the effort and investment required to implement EAS. The calling rate from the Duffy Exchange to the New Martinsville Exchange, for the month of December 1995, was 9.94 calls per access line per month. Rule 4901:1-7-03(B)(1)(d), O.A.C., states in pertinent part that:

In situations where the calling rate is at least eight from the requesting to the requested exchange, a rebuttable presumption shall exist that some form of EAS, either flat-rate or usage sensitive service, is warranted.

Also significant to the Commission's conclusion in this case is the parties' testimony and information relative to the location of services, products, and activities within the subscribers' local calling areas. Rule 4901:1-7-03, O.A.C., indicates that E

not a substitute for message toll service, but designed to meet the day-to-day calling requirements of subscribers which cannot adequately be met within their local calling area. A review of the testimony reveals that, while some day-to-day calling needs of Duffy Exchange subscribers are obtained in the local calling area, many Duffy Exchange subscribers, whether individuals or businesses obtain the majority of their goods and services from the many businesses in the New Martinsville Exchange. In addition, many Duffy subscribers work in and have family and friends who reside in the New Martinsville Exchange necessitating toll calling between these exchanges. The testimony also indicates that there is not a hospital in the local calling area of the Duffy subscribers. However, less than five miles away, in the New Martinsville Exchange is the closest hospital, with the services of a wide variety of medical specialists. Furthermore, given the close proximity, quality, and costs of the goods, services and activities available in the New Martinsville Exchange it is only logical and economical for the majority of the Duffy Exchange subscribers to transact business with businesses in the New Martinsville Exchange.

Another factor the Commission considers in determining if the institution of the requested flat-rate EAS is justified is the cost, investment, and revenue impact which the company must incur to provide the service. In this case, Ameritech will have investment costs associated with the institution of flat-rate EAS in this case. The principal impact to Ameritech Ohio of instituting flat-rate EAS in this case is the loss of originating and terminating access fees received from interexchange carriers of \$8.33 per minute. Ameritech would receive no revenue from the institution of flat-rate EAS to offset the loss of revenue from access fees.

Upon consideration of all of the information in this case, the Commission believes that there is sufficient evidence of community of interest from the Duffy Exchange to the New Martinsville Exchange to warrant the institution of one-way, flat-rate EAS, rather than one-way, measured-rate EAS, as recommended by Ameritech. The loss of access revenue to Ameritech is not substantial. Accordingly, Ameritech should institute one-way flat-rate EAS from the Duffy Exchange to the New Martinsville Exchanges within 12 months of this Opinion and Order. However, as a result of the restriction against Ameritech to provide interLATA telephone service, Ameritech Ohio must file an application with the District Court for a waiver of the restriction on transporting interLATA traffic. Only upon the receipt of the waiver, should Ameritech institute one-way, flat-rate EAS from the Duffy Exchange to the New Martinsville Exchange. Accordingly, Ameritech should file an application for a waiver of the interLATA restriction with the District Court within 30 days of the issuance of this Opinion and Order, and keep the Commission and the spokesperson advised of the status of the application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 25, as amended January 16, 1996, Carol Jennings and numerous other subscribers of the Duffy Exchange filed a

petition seeking the institution of one-way, non-optional, flat-rate EAS between the Duffy Exchange of Ameritech Ohio and the New Martinsville Exchange of Bell Atlantic in West Virginia.

- (2) Notice of this proceeding and the public hearing was published in The Monroe County Beacon, a newspaper of general circulation in Monroe, County, Ohio.
- (3) A public hearing was held in this matters on June 26, 1996, in Hannibal, Ohio. At the hearing, 14 public witnesses testified in favor of the proposed EAS and no one testified in opposition to the requested service.
- (4) The Duffy Exchange is located entirely in Monroe County, Ohio, the New Martinsville Exchange is located in West Virginia and local telephone service is provided by Bell Atlantic West Virginia, Inc. The county seat of Monroe County is Woodsfield. The local calling area of the Duffy Exchange currently includes the Clarrington, Graysville, New Malamoras, and Woodsfield exchanges.
- (5) The relevant toll calling rate for the month of December 1995 from the Duffy Exchange to the New Martinsville Exchange was 9.94 per access line.
- (6) Section 4905.26, Revised Code, requires the Commission to schedule for hearing a complaint filed by 100 subscribers, or five percent of the subscribers in any telephone exchange, whichever is smaller, against a telephone company public utility regarding certain aspects of its service.
- (7) Ameritech is a telephone company, as defined in Section 4905.03(A)(2), Revised Code, and is a public utility, as defined in Section 4905.02, Revised Code. Therefore, it is subject to the jurisdiction of this Commission under the authority of Sections 4905.04 and 4905.05, Revised Code.
- (8) Sections 4905.26, 4905.22, and 4905.381, Revised Code, authorize the Commission to order telephone companies under its jurisdiction to establish extended area service. This authority was recognized in *General Telephone Co. v. Public Utilities Commission*, 45 Ohio St. 2d 154, 341 N.E.2d 832 (1976), and *Ohio Central Telephone Corp. v. Public Utilities Commission*, 166 Ohio St. 180, 140 N.E.2d 782 (1957).

- (9) Ameritech Ohio submits that it would lose approximately \$8,503 in annual revenues in order to implement one-way, flat-rate EAS from the Duffy Exchange to the New Martinsville Exchange of West Virginia.
- (10) The community of interest from the Duffy Exchange to the New Martinsville Exchange warrants the institution of one-way, non-optional, flat-rate EAS.
- (11) The Commission finds it appropriate to order that one-way, flat-rate EAS from the Duffy Exchange to the New Martinsville Exchange of Bell Atlantic in West Virginia be instituted within 12 months of the issuance of this Opinion and Order.

ORDER:

It is, therefore,

ORDERED, That, the complainants' request to establish one-way, non-optional flat-rate EAS from the Duffy Exchange to the New Martinsville Exchange, is granted. It is, further,

ORDERED, That, within 30 days of the issuance of this Opinion and Order, Ameritech shall file an application for a waiver from the United States District Court for the District of Columbia which would authorize Ameritech to provide interLATA telecommunication services from the Duffy Exchange of Ameritech to the New Martinsville Exchange of Bell Atlantic, that Ameritech submit a copy of the waiver application, within seven days of its filing, to the Commission and the spokesperson for the complainants, and that Ameritech keep the Commission and the spokesperson advised of the status of the waiver application. It is, further,

ORDERED, That Ameritech shall institute one-way, non-optional, flat-rate EAS from the Duffy Exchange to the New Martinsville Exchange as soon as practicable within 12 months from the date of this Order. It is, further,

ORDERED, That Ameritech establish an in-service date within four months of the date of this Order, inform the spokesperson of the date, inform the Commission by filing a notice in this docket and served upon the Compliance Division, and advise the Commission, the Compliance Division and the spokesperson no later than 60 days prior to the in-service date in the event that the date cannot be met, together with the reason. It is, further,

ORDERED, That Ameritech shall issue, prior to the in-service date, a press release to inform the media of the effective date and time of the EAS. It is, further,

ORDERED, That prior to the in-service date of the EAS, Ameritech shall provide information to customers, either by bill insert or separate letter, which describes the EAS service, explaining the new dialing procedures, states the date and time that service will become available, and explains the rates for the service. It is, further,

ORDERED, That 60 days prior to the in-service date, Ameritech Ohio shall submit to the Commission's Public Interest Center the customer notice for Staff approval. further,

ORDERED, That upon implementation of EAS, Ameritech provide a record which informs customers who dial "1" prior to dialing a number in the New Martinsville Exchange that they no longer need to dial "1" before placing the EAS. It is, further,

ORDERED, That Ameritech is authorized to file revised tariff sheets reflecting establishment of one-way, non-optional, flat-rate EAS from the Duffy Exchange to New Martinsville Exchange of West Virginia, under one cover letter, which refers to Case No. 95-983-TP-PEX and the case number of Ameritech's tariffs. The revised tariff sheets shall be effective upon institution of the service. It is, further,

ORDERED, That copies of this Order be served on the spokesperson for complainants, Ameritech and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



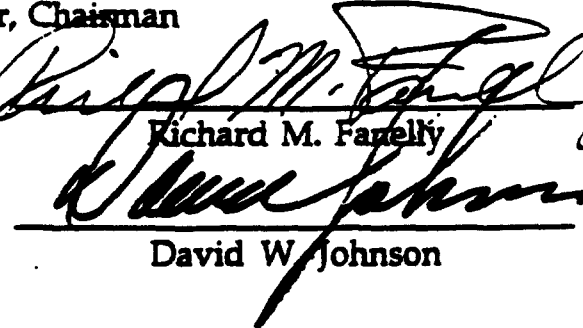
Craig A. Glazer, Chairman

Jolynn Barry Butler



Ronda Hartman Fergus

Richard M. Fanelly

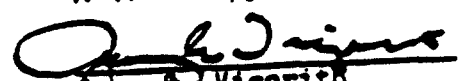


David W. Johnson

GNS/pdc

Entered in the Journal
AUG 22 1996

A True Copy


Gary E. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Carol Jen-)	
nings and Numerous Other Subscribers of)	
the Duffy Exchange of Ameritech Ohio,)	
)	
Complainants,)	
)	
v.)	
)	
Ameritech Ohio,)	Case No. 95-983-TP-PEX
)	
Respondent,)	
)	
Relative to a Request for Extended Area)	
Service From the Duffy Exchange of Ameri-)	
tech Ohio to the New Martinsville Exchange)	
of Bell Atlantic West Virginia, Inc.)	

ENTRY ON REHEARING

The Commission, considering its Opinion and Order issued August 22, 1996, and the application for rehearing filed by Ameritech Ohio on September 20, 1996, and be otherwise fully advised, now issues its Entry on Rehearing.

- (1) On August 22, 1996, the Commission issued its Opinion and Order in this matter, granting the complainants' request for one-way flat-rate extended area service (EAS) from the Duffy Exchange of Ameritech Ohio (Ameritech, company) to the New Martinsville Exchange of Bell Atlantic West Virginia, Inc. (Bell Atlantic) in West Virginia. As part of the August 22, 1996 Opinion and Order, Ameritech was directed to:
 - (a) file an application for a waiver from the United States District Court of the District of Columbia which would authorize Ameritech to provide interLATA telecommunications services from the Duffy Exchange of Ameritech to the New Martinsville Exchange of Bell Atlantic within 30 days of the issuance of the Opinion and Order;
 - (b) institute one-way, non-optional, flat-rate EAS from the Duffy Exchange to the New Martinsville Exchange as soon as practicable within 12 months from the date of this Order;

- (c) establish an in-service date within four months of issuance of this Order; and
 - (d) provide a recording which informs Duffy Exchange customers who dial "1" prior to dialing a number in the New Martinsville Exchange that they no longer need to dial "1" before placing the EAS call upon implementation of EAS.
- (2) On September 20, 1996, Ameritech filed an application for rehearing. Ameritech asserts that the Opinion and Order is unreasonable and unlawful. More specifically Ameritech alleges that the Order:
 - (a) fails to recognize the current federal procedure that Ameritech must follow to lawfully offer EAS;
 - (b) fails to recognize that Ameritech must obtain the approval of the West Virginia Public Service Commission and Bell Atlantic to terminate EAS in the New Martinsville Exchange before EAS can be provided; and
 - (c) orders Ameritech to implement a "dial 1" recording procedure instead of allowing an alternative dialing pattern.
- (3) The complainants did not file a memorandum contra Ameritech's application for rehearing.
- (4) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a proceeding may apply for a rehearing with respect to any matter determined in the proceeding by filing an application within 30 days of the Order in the Commission's journal. The Commission may grant and hold a rehearing on the matters specified in the application if, in its judgment, sufficient reason appears.
- (5) Ameritech's application for rehearing has been timely filed as required by Section 4903.10, Revised Code.
- (6) First, Ameritech asserts that the Commission ordered it to follow a nonexistent federal procedure to acquire approval to

provide the ordered EAS. As Ameritech correctly asserts the procedure used to acquire a waiver from the U. S. District Court was eliminated on April 11, 1996. *United States v. Western Electric Co. et al.*, (C.A. No. 82-0192), April 11, 1996. Accordingly, Ameritech's request for a rehearing as to filing for a waiver from the U. S. District Court should be granted. Furthermore, as a result of enactment of the Telecommunications Act of 1996, (P.L. 104-104, 110 Stat. 56). Ameritech should file a petition with the Federal Communications Commission (FCC) for a modification of the Local Access and Transport Area (LATA) boundaries or apply for authority to provide interLATA service from the Duffy Exchange to the New Martinsville Exchange within 30 days of journalization of this Entry on Rehearing.

- (7) Next, Ameritech asserts that the order fails to recognize that the approval of the West Virginia Public Service Commission (WVPSC) and Bell Atlantic must be obtained before the ordered service can be implemented.

Contrary to Ameritech's assertion, the Commission knows that Bell Atlantic and the WVPSC must grant Ameritech authority to terminate calls in the New Martinsville Exchange. The Commission's failure to explicitly acknowledge the interLATA/interstate nature of this case to Ameritech's satisfaction should not be interpreted as a misunderstanding of the process required to implement the ordered service. Ameritech has suggested that the Commission order implementation of flat-rate EAS within 12 months of the completion of the required federal and West Virginia approvals. While the Commission recognizes that the process to be utilized to acquire approval to offer interLATA/interstate service is not as clear as it once was with the termination of the waiver process and the enactment of the Telecommunications Act of 1996, the approach suggested by Ameritech may encourage unnecessary delays to the detriment of the Duffy Exchange subscribers.

Therefore, Ameritech should be directed to file the necessary petitions with the WVPSC to implement service and begin the necessary negotiations with Bell Atlantic to acquire approval to terminate calls in the New Martinsville Exchange within 30 days of journalization of this Entry on Rehearing. Further, Ameritech should be directed to concurrently pursue the approval of the FCC and WVPSC, as well as, negotiate

with Bell Atlantic, notwithstanding FCC disposition of Ameritech's request to provide interLATA interexchange service. Ameritech is hereby put on notice that this Commission will be diligently working with the WVPSC to expedite approval for EAS from the Duffy Exchange to the New Martinsville Exchange.

Furthermore, Ameritech should be directed to file for an extension of the 12 month EAS implementation deadline, by July 23, 1997, in the event that the ordered service will not likely be established by August 22, 1997. Ameritech's request for an extension of the deadline to establish the ordered EAS should include supporting documentation of all action taken to secure the necessary approvals to implement EAS. Accordingly, Ameritech's application for rehearing as to the deadline to establish service is denied.

- (8) Finally, Ameritech requests that the company be permitted to implement an alternative dialing pattern rather than the dial "1" recording procedure ordered. Ameritech argues that the dial "1" directive conflicts with the NPA Code Relief Planning Guidelines issued by the Industry Carriers Compatibility Forum (NPA Guidelines), as sponsored by the Alliance for Telecommunications Industry Solutions. Ameritech quotes the NPA Guidelines as stating "[t]he use of protected codes (NXXs), which permit 7-digit dialing across NPA boundaries, should be eliminated or reduced to an absolute minimum as part of the NPA code relief planning process. Reduction or elimination of protected codes should be accomplished prior to a request for a relief NPA code." Further, Ameritech notes that 1 + 10-digit dialing is the current arrangement. Furthermore, the Company argues that retaining the 1 + 10-digit dialing arrangement would avoid unnecessary confusion if in the future Duffy Exchange subscribers are required to resume 1 + 10-digit dialing in the likely event of the exhaustion of available NXX codes. Ameritech also notes that permissive dialing has previously been approved by the Commission in similar cases.¹

- (9) Upon review of Ameritech's application for rehearing, the Commission finds that Ameritech's request for an alternative

¹ See Case No. 95-408-TP-PEX, *In the Matter of the Petition of Susan Snyder and Numerous C Subscribers of the Resaca Exchange of GTE North v. GTE North Incorporated, et al.*, and Case No. 2055-TP-PEX, *et al.*, *In the Matter of the Petitions of John Signorini and David Novak and Numerous Other Subscribers of Various Exchanges of GTE North v. GTE North Incorporated, et al.*

dialing plan should be granted. When the Commission ordered Ameritech to provide a recording informing customers of a new dialing procedure, the Commission believed such a recording to be the best form of customer education for the Duffy Exchange subscribers. However, in light of the issues raised by Ameritech, and the fact that the affected customers currently must dial 1 + 10-digits to make a call to the New Martinsville Exchange, the Commission believes that an alternative dialing plan may be more efficient and less confusing to customers in the long-term. Accordingly, Ameritech should be permitted to retain the 1 + 10-digit dialing plan in effect in the Duffy Exchange after implementation of EAS from the Duffy Exchange to the New Martinsville Exchange.

It is, therefore,

ORDERED, That Ameritech's application for rehearing is granted pursuant to Findings (6) and (9), but denied pursuant to Finding (7). It is, further,

ORDERED, That Ameritech concurrently file the necessary petitions with the WVSC and the WVPSC to implement service and begin the necessary negotiations with Atlantic to acquire approval to terminate calls in the New Martinsville Exchange within 30 days of journalization of this Entry on Rehearing. It is, further,

ORDERED, That within 120 days of procuring all necessary approvals Ameritech establish an in-service date. It is, further,

ORDERED, That in all other respects Ameritech comply with the orders of the August 22, 1996 Opinion and Order issued in this case. It is, further,